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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,699	02/15/2002	Thomas Happe	01MEL1	3524

7590 05/14/2004

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EXAMINER

PAK, YONG D

ART UNIT	PAPER NUMBER
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,1652

DATE MAILED: 05/14/2004

14/

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,699

Applicant(s)

HAPPE, THOMAS

Examiner

Yong D Pak

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6, 11, 13, 14, 16, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 5, 13, 14, 16, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 is/are rejected.
- 7) ☒ Claim(s) 4 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: CRF problem report.

DETAILED ACTION

Claims 4-6, 11, 13-14, 16 and 19-20 are pending.

Election/Restrictions

Claims 5, 13-14, 16 and 19-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Notice of Possible Rejoinder: The Examiner notes that if claims 4, 6 and 11 are found directed to an allowable product, then claims 13-14, which are directed to the process of using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, would now be rejoined pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86; see also MPEP 821.04, *In re Ochiai*, and *In re Brouwer*). Since process claims 13-14 would be rejoined and fully examined for patentability under 37 CFR 1.104, applicants are instructed to amend said claims as deemed necessary according to rejections made against the elected claims. Additionally, claim 16 would not be rejoined since they would not directed to the process of making or using the patentable product.

Specification

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This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). A computer readable form (CRF) of the sequence listing was submitted. However, the CRF could not be processed by the Scientific and Technical Information Center (STIC) for the reason(s) set forth on the attached CRF Diskette Problem Report.

Applicant is given ONE MONTH, or THIRTY DAYS, whichever is longer, from the mailing date of this letter within which to comply with the sequence rules, 37 CFR 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 CFR 1.821(g). Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). In no case may an applicant extend the period for reply beyond the SIX MONTH statutory period. Direct the reply to the undersigned. Applicant is requested to return a copy of the attached CRF Diskette Problem Report with the reply.

Claim Objections

Claims 4, 6 and 11 are objected to because of the following informalities: the claims refer to a sequence identifier but the application lacks a readable CRF. Appropriate correction is required.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 11 is rejected under 35 U.S.C. 102(a) as being anticipated by Mets.

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Mets teach a DNA molecule encoding a hydrogenase that is 100% identical to SEQ ID NO:5 of the instant invention (AF289201).

Applicants argue that the present inventor was first to submit SEQ ID NO:5 to GenBank under Accession No. AJ012098 on October 15, 1998. Therefore the present inventor was first to invent.

Applicants can overcome the rejection by swearing back of the reference through the submission of an affidavit under 37 CFR 1.131.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Pak whose telephone number is 703-308-9363. The examiner can normally be reached on 6:30 A.M. to 5:00 P.M. Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 703-308-3804. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Yong D. Pak
Patent Examiner


PONNATHAPU ACHUTAMURTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1800

10/077,699B
02-15-2002

□CProjectData□□□□Hydrogen Production□01MEL1
10/077,699

2002-02-15□□□Scenedesmus obliquus□Chlorella fusca□Chlamydomonas
rheinhardtii□Chlorella fusca□Chlorella fusca□Chlorella fusca□Chlamydomonas
rheinhardtii□ □□yy□□

(the above is a sample of submitted
file)

IF PatentIN software was used
to create submitted file, please
contact Mark Spencer at
571-272-2533.